Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. 00 - [redacted]

In The

Supreme Court of the United States

ROLAND V. JOHNSON - PETITIONER

vs.

WILLIAM J. HENDERSON - RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI EN BANC TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI EN BANC

ROLAND V. JOHNSON
35 GLOSTER RD
LAWRENCEVILLE, GA 30044
770-279-1634

6 2 P

QUESTIONS PRESENTED FOR REVIEW

Comes Now, Roland Johnson, Pro Se, and petitions this court pursuant to **(Supreme Court Rule 10 a and 10 b),** FRAP 35 and 41 **Petition for Writ of Certiorari** of the decision issued on March 13, 2001 for claimed error of fact and law presented herein and which was not heard En Banc by order dated June 4, 2001. More specifically Mr. Johnson requests that Writ of Certiorari of this court March 13, 2001 order and the denial of petition for rehearing en banc, and review en banc for lack of jurisdiction on the grounds that the District Court and the Eleventh Circuit Court of Appeals decisions conflict with the decision of which review is sought and a decision of another appellate court on the same issue. **Guidance** is needed from this court on violation of petitioners **fifth, seventh and fourteenth amendment rights.** The issues are as follows:

I. The eleventh circuit /district court deprived the petitioner of his **Fifth Amendment to the Constitution of the United States of America** rights by denying him due process of the law by refusing to reopen the case that was based on error, fraud, bribery, criminal conspiracy, without authority, equitable tolling, and inaffective assistance of counsel.

II. The eleventh circuit / district court deprived the petitioner of his **Seventh Amendment to the Constitution of the United States of America** rights by denying to reopen the case which violated his right of a jury trial which applies to federal actions.

III. The eleventh circuit /district court deprived the petitioner of his **Fourteenth Amendment to the Constitution of the United States of America** rights by denying to reopen his case which was based on error, fraud, bribery, criminal conspiracy, without authority, equitable tolling, and inaffective assistnace of counsel, this was a violation of procedural due process of law.

IV. The District Court judge and the Eleventh Circuit Court of Appeals erred in failing to reopen the case based on fraud, error, bribery, criminal conspiracy, equitable tolling and inaffective assistance of counsel.

V. **Irvin v. Department of Veterans Affairs,** 498 U.S. 89, 95 -96, 111S. Ct 453, 457, 112 L. Ed. 2d 435 (1990), applies to the petitioner as stated: equitable tolling is appropriate when a movant untimely files because of extraordinary circumstances that are both beyond his control and unavailable even with diligence.

VI. **Bailey v. Glover,** 88 U.S. (21 Wall.) 342, 347, 22 L. Ed. 636 (1874) applies to the petitioner as

stated: when "equitable tolling" is the doctrine under which plaintiffs may sue after the statutory time period had expired if they have been prevented from doing so due to inequitable circumstances.

VII. **Osterneck v. E.T. Barwick Indus.,** 825 F. 2d 1521, 1535 (11th Cir. 1987) applies to the petitioner as stated: where a party injury by another's fraudulent conduct "remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered...".

VIII. **Osterneck v. Ernest & Whinney,** 489U.S. 169, 109 S. Ct. 987, 103 L.Ed. 2d 146 (1989) applies to the petitioner as stated: if third party is in privity, or a principal-agent relationship with the defendant exists, defendant's approval of the concealment may be sufficient to **toll** the statute.

IX. **Holmberg,** 327 U.S. at 394 - 96, 66 S. Ct. 582 applies to the petitioner as stated: Unless Congress states otherwise, equitable tolling should be read into every federal statute of limitations.

X. **Johnson v. Al Tech Specialties Steel Corp.,** 731 F. 2d 143, 146, (2d Cir 1984) applies to the petitioner as stated: The **U.S. Supreme Court** in the E.E.O.C. line of cases have held that "the remedial purposes of civil rights legislation would be defeated if aggrieved Plaintiff's were absolutely

barred from pursuing judicial remedies by reason of excusable failure to meet the time requirements".

XI. **Bernard Schoninger Shopping Ctrs. v. J.P.S. Elastomerics, Corp.,** an Appeal from the United States District Court for the Southern District of Florida, (No. 93 - 739 - CIV - EBD) applies to the petitioner as stated: the court held that the fraud provision starts the limitations period only when the plaintiff discovers the "facts constituting the fraud".

XII. **Supreme Court, 498 U.S.** at 94 - 95, 111 S. Ct. at 457 - 58, applies to the petitioner as stated: The **Supreme Court** wrote these words: Federal courts have typically extended equitable relief only sparingly. We have allowed equitable **tolling** in situations where **the** claimant has actively pursued his judicial remedies by filing a defective pleading during **the** statutory period, or where **the** complainant has been induced or tricked by his adversary's misconduct into allowing **the** filing deadline to pass. We have generally been much less forgiving in receiving late filings where **the** claimant failed to exercise due diligence in preserving his legal rights.

XIII. The District Court judge erred in granting summary judgement on the sexual harassment / Retaliation when it was obvious that three other employees swore under oath that they had been

sexually harassed by the same supervisor. The eleventh circuit court of appeals erred in their refusal to review the complaint for claimed lack of jurisdiction.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Roland Vance Johnson, respectfully pray that a Writ of Certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from federal courts;

The opinion of the United States court of appeals at Appendix F to the petition and is unpublished.

JURISDICTION

For cases from Federal Courts:

A timely petition for rehearing was denied by the United States Court of Appeals for the eleventh circuit on the following date: June 04, 2001, and a copy of the order denying rehearing appears at Appendix I.

The jurisdiction of the Court is invoked under 28 U.S.C. 1254(1)

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V:

"No person shall. . . be deprived of life, liberty or property without due process of law; . . ."

United States Constitution, Amendment VII:

"In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

United States Constitution, Amendment XIV, Sec. 1:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States : nor shall any State deprive any person of life, liberty, or property, without due process of law: nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Appellant, Roland V. Johnson, raised due process issues in his initial brief and reply brief. On March 13, 2001 this court affirmed on the issue regarding the District Court denial of Appellant's Motion to Re-open Case. The Court ruled that it did not have jurisdiction to review any of Johnson's issues on appeal except for the denial of the motion to reopen.

ISSUE - 1

Due to the error in the settlement agreement and due to the fraud between counsel for Appellant and the U S. attorney, Appellant did not file within 120 days. Therefore equitable tolling should apply to this case in that the conduct of the U.S. attorney in paying counsel for Appellant, $10,000.00 not to assist Appellant further in correcting the ommissions in the official transcript of the settlement agreement that were left out of Appellant's reply to Judge Brill's direct question. Appellant stated, "that there would be no taxes taken out of the settlement and I would not have to pay taxes on the settlement agreement. This was agreed upon in Judge Brill's Chamber's by both parties and was stated on the record for the official transcript agreement. This coupled with attorneys for Appellant assuring Appellant that they were taking care of the corrections necessary in the record operated to induce Appellant to allow the

deadline for filing appeal to pass. Equitable tolling is applicable in this case due to the fraud engaged in by Appellant's attorneys and the U.S. Attorney / U.S. Postal Service. "Equitable tolling" is the doctrine under which plaintiffs may sue after the statutory time period had expired if they have been prevented from doing so due to inequitable circumstances. Bailey v. Glover, 88 U.S. (21 Wall.) 342, 347, 22 L. Ed. 636 (1874) (where a party injury by another's fraudulent conduct "remains in ignorance of it without any fault or want of diligence or care on his part, the bar of the statute does not begin to run until the fraud is discovered...") Osterneck v. E.T. Barwick Indus., 825 F.2d 1521, 1535 (11th Cir. 1987), aff'd Osterneck v. Ernest & Whinney, 489 U.S. 169, 109 S. Ct. 987, 103 L.Ed.2d 146 (1989) (if third party is in privity, or a principal-agent relationship with the defendant exists, defendant's approval of the concealment may be sufficient to toll the statute). Unless Congress states otherwise, equitable tolling should be read into every federal statute of limitations. Holmberg, 327 U.S. at 394-96, 66 S. Ct. 582.

The U.S. Supreme Court in the E.E.O.C. line of cases have held that "the remedial purposes of civil rights legislation would be defeated if aggrieved Plaintiffs were absolutely barred from pursuing judicial remedies by reason of excusable failure to meet the time requirements." Johnson v. Al Tech

Specialties Steel Corp., 731 F. 2d 143, 146 (2dCir. 1984), Browning v. AT&T Paradyne,

In this case the time requirements were not met because, unknown to Appellant, attorneys for the Appellant, accepted $10,000.00 from the U.S. attorney / Postal Service not to assist Appellant in correcting an egregious error in the record and/or appeal. Appellant reasonably relied and believed that everything was being done necessary to protect his interest and was lulled into allowing the period to expire. When in fact Appellants attorney began to work for the U.S. Attorney / Postal Service with the payment of $10,000.00. The equities favored tolling because the government's secretive conduct prevented the Appellant from bringing his action in a timely manner. Bowen, 476 U.S. at 479, 106 S. Ct. at 2030.

The government's failure to address the issue of the $10,000.00 being paid to the Appellants counsel not to assist Appellant in reopening his case to correct the error in the transcript is clear evidence that fraud did take place as stated by the Appellant and confirmed by FBI Special Agent Joe Roebuck. By not addressing this issue, it is clearly evident that Appellant was disadvantaged from a due process standpoint as a result of the misconduct of the parties and that the District Court erred in refusing to reopen the case.

Equitable tolling is appropriate when a movant untimely files because of extraordinary circumstance that are both beyond his control and unavailable even with diligence. Irvin v. Department of Veterans Affairs, 498 U.S. 89, 95-96, 111S. Ct 453, 457, 112 L. Ed. 2d 435 (1990). In the present case, Appellant was unaware of the activities between the U.S. Attorney and his own counsel until it was confirmed by FBI, Special Agent Joe Roebuck, on September 14, 2000, at 10:44 a.m. These activities were beyond his control and knowledge. Therefore, Appellant was unaware of the fraud that had taken place during the 120 day filing period, this prevented Appellant from filing on the matter of fraud in his initial motion to the court to reopen. In Bernard Schoninger Shopping Ctrs. v. J.P.S. Elastomerics, Corp., an Appeal from the United States District Court for the Southern District of Florida. (No. 93-739-CIV EBD), the court held that the fraud provision starts the limitations period only when the plaintiff discovers the "facts constituing the fraud." In this case that occurred on September 14, 2000.

In Holmberg, 327 U.S. at 394-95, 66 S. Ct. 582, the court held in TILA cases that "we apply the general rule that equitable tolling applies to all federal statutes unless the stature states otherwise. In dicta the Court reasoned that the remedial purpose of TILA would be frustrated if the time limits were applied literally. It was indicated that to

do so consumers whose cause of action was fraudulently concealed from them until after a year had passed could not pursue a cause of action under TILA. In the present case the status of the settlement was fraudulently concealed from Appellant. Appellant was led to believe that his counsel was working on and had resolved the dispute regarding the error in the official transcript of the settlement agreement when in fact they had received $10,000.00 from the U.S. Attorney to do everything but that. For this reason we implore this court to hold that equitable tolling applies to the facts of this case. The Supreme Court wrote these words:

Federal courts have typically extended equitable relief only sparingly. We have allowed equitable tolling in situations where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass. We have generally been much less forgiving in receiving late filings where the claimant failed to exercise due diligence in preserving his legal rights. 498 U.S. at 94-95, 111 S. Ct. at 457-58.

Contrary to what U.S. Attorney James Schulz has indicated in his letter to the Georgia State Bar, the $10,000.00 attorney fee to Mr. Eugene Felton was paid out of my "lump sum " settlement of $103,000.00. See Settlement Transcript page 3, L10

- 16, which discusses this issues. Also, look to Mr. Schulz, "Brief of Appellee, Page 4, which also discusses this issue in detail. The $10,000.00 paid to Mr. Eugene Felton by the U.S. Attorney / Postal Service was an additional payment on top of the $10,000.00 he received from the "lump sum" settlement payment. This was a bribe paid to my attorneys not to assist me in correcting the errors in the transcript and reopening the case.

ISSUE - 2

Whether the District Court judge erred in his ruling that Appellant did not file within 120 days if settlement is not consummated. Appellant filed on January 27, 2000 and District Court Judge Thrash ruled on this matter on August 03, 2000.

Appellant entered into a settlement agreement with the Postal Service on August 24, 1999 that had specific payment terms that were vital to Appellant's resignation from the Postal Service, these specific payment terms were that there would be no taxes taken out and I would not have to pay any taxes on the settlement agreement. On September 13, 1999 I received a copy of the official trancript of the settlement agreement. After reviewing the official transcript I discovered that there was an error in the transcript that left out the part of the settlement agreement where I responded to Judge Brill's direct question. My response was that there would be no

taxes taken out of the settlement agreement and I would not have to pay any taxes on the settlement agreement. I notified the courts and my counsel of the error the day I received the transcripts and discovered the error which was September 13, 1999. Appellant was assured by his counsel that the error would be taken care of and at a later date counsel assured Appellant that the error in the official transcript had been taken care of. On January 24, 2000 Appellant received his W-2 form on January 24, 2000 and saw that the settlement payment had been added to his yearly earnings, therefore making it taxable. The settlement transcript clearly shows that Appellant's response to Judge Brill"s question was ommitted from the transcript. *See Settlement Trancript* T6 L:3-9. On January 27, 2000 Appellant filed a motion to reopen the case, District Court Judge Thrash ruled on the motion on August 3, 2000 only after numerous calls to the Court from the Appellant asking for a decision. Appellant was asked to refax the motion that was faxed on January 27, 2000 to the court since the court had misplaced the original fax.

ISSUE - 3

Whether the district Court Judge Erred in Granting Summary Judgement on The Sexual Harassment / Retaliation Claim Petitioner relies on

the facts and argument in his notice of appeal, opening brief and reply brief on this matter.

REASON FOR ALLOWANCE OF THE WRIT OF CERTIORARI

THIS PETITION *SHOULD BE GRANTED* BECAUSE GUIDANCE FROM THIS COURT IS NEEDED ON VIOLATIONS OF PETITIONERS FIFTH, SEVENTH AND FOURTEENTH CONSTITUTIONAL AMENDMENT RIGHTS BASED ON THE ERROR, FRAUD, BRIBERY,CRIMINAL CONSPIRACY, EQUITABLE TOLLING,WITHOUT AUTHORITY, AND INAFFECTIVE ASSISTANCE OF COUNSEL THAT WAS INVOLVED IN THIS CASE.

This petition should be granted because guidance is needed from this court on violations of petitioner's **Fifth, Seventh and Fourteenth Constitutional Amendment Rights** based on the error, fraud, bribery, criminal conspiracy, without authority, inaffective assistance of counsel, and the equitable tolling that was involved in this case. The decision by the appellate court, that it was constitutionally permissible for Petitioner's counsel to accept $10,000.00 from Appellee not to assist Petitioner in reopening the case. This was a blatant act of fraud and bribery which led to the equitable tolling standard that had Petitioner known of the $10,000.00 payment he would have been able to file to reopen in a timely manner. This strategy

eviscerated the protections guaranteed to Petitioners by the Fifth, Seventh and Fourteenth Amendments.

Violations of the **Fifth Amendment's** protection of due process of law deprived Petitioner of property which was the agreement that no taxes were to be paid on the settlement agreement. Petitioner was not granted due process of the law due to the error, fraud, bribery, criminal conspiracy, without authority, inaffective assistance of counsel and equitable tolling that his counsel had engaged in with the Appellee's counsel. This fraud prevented the Petitioner from filing to reopen his case due to the error in the transcript, therefore equitable tolling should apply in this case in that the conduct of the Petitioner's counsel and Appellee's counsel prevented Petitioner from receiving due process of the law.

Had Petitioner been given his **Seventh Amendment** Right which guarantees a jury trial he would have proven that his counsel received a $10,000.00 bribe payment through Appellee's counsel without Petitioner's knowledge or consent. **FBI** Special Agent Joe Robuck substantiated the bribe payment through his investigation. Petitioner's counsel was to be paid by the Petitioner, which in fact he was, in addition he received a $10,000.00 bribe payment from the Appellee.

Violations of the **Fourteenth Amendment's** protection of procedural due process of law in

connection with the error, fraud, bribery, criminal conspiracy, without authority, inaffective assistance of counsel and equitable tolling. No state shall deny to any person within its jurisdiction the equal protection of the law. The Petitioner was not granted equal protection of the law when he was a victim of fraud by his counsel and has been denied any recourse through the law by the eleventh circuit /district court by refusing to allow equitable tolling for reopening his case.

Petitioner's counsel was guilty of "Collusion" which is the existence of fraud of some kind, the employment of fraudulent means or of lawful means for the accomplishment of an unlawful purpose, **Dickerman v. Northern Trust Co.** 176 US 181, 20 S Ct 311, 6 L Ed 2d 614. Fraud in the sense of a court of equity includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust, or confidence justly reposed, and injurious to or by which an undue or unconscientious advantage is taken of another. **Moore v. Crawford,** 130 US 122, 9 S Ct 447, 32 L Ed 878. The actions by Petitioner's counsel surely was a breach of legal or equitable duty, trust or confidence.

Appellee's counsel has made countradictory statements to the Georgia State Bar and to the Eleventh Circuit Court about the $10,000.00 payment made to Petitioner's counsel from Appelle's

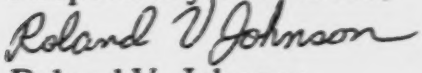
counsel. This is a fraudulent action because as the transcript dictates the Petitioner's counsel was to be paid from the settlement payment by the Petitioner. Because there is a valid legislative interest in protecting the integrity of official inquiries the term "jurisdiction" should not be given a narrow or technical meaning for purposes of 18 USC Section 1001, which prohibits the making of fraudulent statements "in any matter within the jurisdiction of any department or agency of the United States", a statutory basis for an agency's request for information provides jurisdiction enough to punish fraudulent statements under 1001. **Bryson v. United States,** 396 US 64, 90 S Ct 355, 24 L Ed 2d 264. Petitioner has been deprived of his rights and privileges secured by the Constituttion and laws, therefore the Appellee is liable to the party injured in an action at law, suit in equity, or other proper proceedings. 42 U.S.C. Section 1983.

CONCLUSION

Therefore, Petitioner pray that this honorable court restore the entegrity of the lower courts and restore confidence in the judicial system of this country, by remanding this case in its entirety to district court for a jury trial of all issues. Allow Petitioner to amend his complaint to include a tortuous interference with contract claim and a fraud claim against the United States Postal Service, with the right to seek punitive damages on all issues of this complaint. Further, Petitioner asks that the amount tendered to Petitioner be forfeited as a result of the fraud upon the court. Petitioner ask the court to please reinstate Petitioner immediately back to the United States Postal Service, Atlanta Bulk Mail Center, 1800 James Jackson Pkwy, Atlanta, Georgia 30369 with all benefits due to him, including his seniority.

Under Federal Law which is applicable to all states, the **U.S. Supreme Court** states that if a court is "without authority, it's judgements and orders are regarded as nullities. They are not voidable, but simply void; and form no bar to a recovery sought, even prior to reversal in opposition to them. They constitute no justification: and all persons concerned in executing such judgement or sentences, are considered, in law as trespassers." **See. Elliot v. Piersol,** 1 Pet. 328, 340, 26 U.S. 328, 340 (1828).

Respectfully Submitted,



Roland V. Johnson,
Petitioner, Pro Se

No. 00-14596

IN THE

SUPREME COURT OF THE UNITED STATES

ROLAND V. JOHNSON,
Petitioner,

vs.

WILLIAM J. HENDERSON,
Respondent,

PROOF OF SERVICE

I, Roland V. Johnson, do hereby swear or declare that on this date Aug. 31 2001, as required by Supreme Court Rule 29 I have served the enlosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

William J. Henderson /
John E. Potter, Postmaster General
475 L'Enfant Plaza, S.W.
Washington, D.C. 20260

Theodore Olsen, Solicitor General
of the United States
Room 5614, Department of Justice
950 Pennsylvania Ave., N.W.
Washington, D.C. 20530-0001

James R. Schulz / Richard Dean
United States Attorney
1800 United States Courthouse
75 Spring Street, S.W.
Atlanta, Ga 30335

William A. Campbell, Jr.
District Counsel Office
Law Dept. Atlanta Field Office,
U.S. Postal Service
3980 Dekalb Technology Pkwy,
Ste 840
Atlanta, Ga 30340-2778

This the 31 day of August, 2001.

ROLAND V. JOHNSON
Roland V Johnson
Petitioner, Pro Se

35 Gloster Rd
Lawrenceville, Ga 30044

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

ROLAND V. JOHNSON	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:97-CV-1755-JRS
	:	
MARVIN RUNYON,	:	
Postmaster General,	:	
Defendant.	:	

ORDER

The parties came before Magistrate Judge Brill for settlement conferences in this action. Magistrate Judge Brill has reported to the undersigned tha this action has been settled and the settlement placed on the record in open court with a court reporter. Therefore, this action is hereby DISMISSED WITH PREJUDICE subject to the right of any party to reopen the action within 120 days if the settlement is not consummated.

IT I SO ORDERED THIS 31 Day of August, 1999.

JOHN R. STROTHER, JR
United States Magistrate Judge

APPENDIX - A

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

ROLAND V. JOHNSON, Plaintiff,	:	
v.	:	CIVIL ACTION FILE
	:	NO. 1:97-CV-1755-TWT
MARVIN RUNYON, Defendant	:	

ORDER

This matter is before the Court regarding the Plaintiff's letter to the Court of January 27, 2000, which is treated as a Motion to Reopen Case. The motion is denied as untimely in view of the Order of Magistrate Judge John R. Strother Jr. Dismissing the case with prejudice due to settlement, with the right of any party to reopen the action within 120 days if settlement is not consummated.

SO ORDERED, this 3 day of August, 2000.

THOMAS W. THRASH, JR.
United States District Judge

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APPENDIX - B

GOVERNMENT RELATIONS
UNITED STATES
POSTAL SERVICE

September 8, 2000

Honorable Max Cleland,
United States Senator
75 Spring Street, SW, Suite 1700
Atlanta, GA 30303-3309

Dear Senator Cleland:

This is in response to your August 21 letter on behalf of Mr. Roland Johnson of Lawrenceville, reguarding a settlement payment.

As part of a settlement agreement, the Postal Service agreed to pay Mr. Johnson and his attorney a lump sum payment in the amount of $103,000. The payment was made on September 21, 1999, via Postal Service check number 0100129615.

The Internal Revenue Service makes the determination whether taxes must be paid and any tax liability is the responsibility of the recipient. The Postal Service does not have the authority to waive tax liabilities.

Thank you for writing. If I may assist you with other postal issues, please let me know.

APPENDIX - C

Regards,

James B. Quirk
Government Relations Representative

475 L'ENFANT PLAZA SW
WASHINGTON DC 20260-3500

APPENDIX C

October 01, 2000

AFFIDAVIT

Personally appeared before me, an officer duly authorized by law to administer oath, KIMBERLY JOHNSON, who after first being duly sworn, states:

1.

My name is KIMBERLY JOHNSON, I am over (18) years old and I am competent in all respects to testify regarding the matters set forth herein. I have personal Knowledge of the facts stated herein and know them to be true. this affidavit is given voluntarily.

2.

I, Kimberly Johnson have been employed with the U.S. Postal Service for the last 12 years, I am currently an electronic technician level 9. I was present for the settlement conference that was held in Judge Brill's chambers on August 24, 1999 between Roland Johnson, his attorneys, Eugene Felton, and Leodis Matthews and the U.S. Postal Service Representatives BMC Plant Manager James Kelly and U.S. Attorney James Schulz. Judge Gerrilyn Brill met with Roland Johnson, Eugen Felton, Leodis Matthews and myself in her chambers. Roland said he was willing to settle only if no taxes would be taken out of the settlement and he

APPENDIX - D

would not have to pay taxes on the settlement. Judge Brill met with James Kelly and James Schulz, after about six hours they agreed to a settlement and she met with both parties. During this meeting of both parties Roland Johnson stated again that there would be no taxes taken out of the settlement and he would not have to pay taxes on the settlement. BMC Plant Manager James Kelly and U.S. Attorney James Schulz agreed that there would be no taxes taken out and Roland would not have to pay taxes on the settlement Judge Brill said to Roland that this was a good settlement and that he should accept it. She stated that he would be paid $103,000 that would include his attorney fees and there would be no taxes taken out and he would not be responsible for the taxes on the settlement if he agreed to settle this case today. Roland agreed to the settlement with no taxes taken out and he would not have to pay taxes on the settlement. In return Roland would resign from the Postal Service and the case that is pending will be dismissed, as long as the Postal Service abide by the settlement agreement. Not paying any taxes if a settlement agreement was reached was discussed with Roland's attorney Eugene Felton since April 1999. I was on the phone several times when Roland discussed with Eugene Felton not paying taxes on a settlement if reached with the Postal Service. Eugene Felton said thi

APPENDIX - D

s would be stipulated in the settlement agreement if reached. Roland also stated this to his attorney Leodis Matthews on several occasions as I was on the other line during Roland's phone conversatons with Mr. Matthews. On August 23 when Roland and I picked up Mr. Matthews from the airport we discussed terms of any agreement that might be reached. Roland told Mr. Matthews that he would not agree to settle unless he would not have to pay taxes on the settlement if reached tomorrow. Mr. Matthews assured Roland and I that this would be part of any settlement if reached on August 24, 1999. Roland was promised in the Judge's chambers by both parties including Judge Brill that he would not have to pay taxes on the settlement.

Further this affiant sayeth not,

_____

Sworn to and subscribe
Kimberly Johnson

APPENDIX - D

October 09, 2000

AFFIDAVIT

Personally appeared before me, an officer duly authorized by law to administer oath, ROLAND JOHNSON, who after first being duly sworn, states:

1.

My name is ROLAND JOHNSON, I am over eighteen (18) years old and I am competent in all respects to testify regarding the matters set forth herein. I have personal Knowledge of the facts stated herein and know them to be true. this affidavit is given voluntarily.

2.

I, Roland Johnson, received a phone call from FBI Special Agent Joe Robuck on September 14, 2000 at 10:44 a.m. He informed me that I did not have to worry about finding out if the government had paid my attorneys $10,000 without my knowledge not to assist me in reopening my case, that it was no longer an issue. FBI Special Agent Joe Robuck said my attorneys had been paid by the government but I did not need to try and find out how he got this information. I said are you sure and he said yes. I notified judge Brill's office about the error in the transcript on September 13, 1999, at 4:15 p.m. the person I contacted was Judge Brill's secretary

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Cookie. I notified Attorney Leodis Matthews on September 13, 1999 at 4:30 p.m. about the error in the transcript. I notified Attorney Eugen Felton on September 13 and September 16, 1999 about the error in the transcript. I notified court reporter Lois D. Maczko on September 16, 1999 at 10:10 a.m. about the error in the transcript. I notified court reporter supervisor Francine Kent on September 16, 1999 at 10:15 a.m. about the errors in the transcript. I notified Judge Strother's office on September 16, 1999 at 10:20 a.m. about the error in the transcript, the contact person was law clerk Fern White. I notified U.S. Attorney James Schulz on Septemeber 20, 1999 between 4:00 and 4:30 p.m. about the error in the transcript. Judge Brill, U.S. Attorney James Schulz, my attorneys Leodis Matthews and Eugen Felton, and BMC Plant Manager James Kelly promised me that I would not have to pay taxes on the settlement agreement dated August 24, 1999. After several heated conversations with my attorney Eugene Felton, Jr. he bragged that the U.S. Attorney James Schulz and the Postal Service paid them an additional $10,000.00 not to assist me in filing a motion on my behalf so that the case could be reopened and investigated.

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Further this affiant sayeth no,

_____

Roland V. Johnson

Sworn to and subscribe
before me this_____day
of October, 2000.

_____

Notary Public

APPENDIX - E

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00-14596
Non-Argument Calendar

D.C. Docket No. 97-01755-CV-JRS-1

ROLAND V. JOHNSON,
Plaintiff-Appellant,

versus

WILLIAM J. HENDERSON,
Postmaster General,
Defendant-Appellee.

Appeal from theUnited States District Court for the Northern District of Georgia

---

(March 13, 2001)

Before EDMONDSON, DUBINA and HULL, Circuit Judges.

PER CURIAM:

APPENDIX - F

Appellant Roland V. Johnson ("Johnson") appeals the district court order dismissing with prejudice his *pro se* 42 U.S.C. section 2000e ("Title VII") employment discrimination complaint entered on a settlement being placed in the record and the district court order denying his motion to reopen as untimely.

Specifically, Johnson argues on appeal that the district court erred in granting summary judgement on his sexual harassment claim, in dismissing his case with prejudice, and in denying his motion to reopen. Henderson argues that the district court order granting summary judgement cannot be considered on appeal and that the district court did not abuse its discretion in denying the motion to reopen.

This court does not have jurisdiction to review any of Johnson's issues on appeal except for the denial of the motion to reopen, as Johnson's notice of appeal was timely filed with respect to that issue alone. *See Campbell v. Wainwright,* 726 F.2d 702, 703 (11th Cir. 1984). This court reviews a district court's ruling on a motion to reopen for abuse of discretion. *United States v. Esle,* 743 F.2d 1465, 1475 (11th Cir. 1984).

APPENDIX - F

After reviewing the record, we conclude that the district court did not abuse its discretion in denying Johnson's motion to reopen because it was filed outside the 120-day period given to the parties to move the district court to reopen the case without explanation. Accordingly, we affirm the district court's grant of summary judgment.

1

AFFIRMED.

---

1 We also DENY Johnson's motion to amend complaint.

APPENDIX - F

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

ROLAND JOHNSON,
Pro Se :
Plaintiff,
: CIVIL ACTION
vs. : FILE NO. 00 -14596

WILLIAM J. HENDERSON,
Postmaster General :
Defendant

PLAINTIFF'S/APPELLANT REQUESTS EN BANC, MOTION TO AMEND HIS PETITION FOR REHEARING EN BANC, AND REVIEW EN BANC TO INCLUDE THE LETTER ADDRESSED TO THE GEORGIA STATE BAR FROM FORMER U.S. ATTORNEY JAMES R. SCHULZ AMENDED COMPLAINT

The judgement in this case was procurred by Fraud, which prevented the Plaintiff in the judgement from obtaining the benefit of his defense and there was an absense of fault on my part. In the present case fraud, prevented Appellant from obtaining the benefit of his claims.

APPENDIX - G

Contrary to what Mr. Schulz has indicated in his letter to the Georgia State Bar, the $10,000.00 attorney fee to Mr. Eugene Felton was paid out of my "lump sum" settlement of $103,000.00. **See Settlement Transcript page 3, L10 - 16,** which discusses this issue. Also, look to Mr. Schulz, "Brief of Appellee, **Page 4,which also discusses this issue in detail. The $10,000.00 paid to Mr. Eugene Felton by the U.S. Attorney / Postal Service was an additional payment on top of the $10,000.00 he received from the "lump sum" settlement payment. This was a bribe paid to my attorneys not to assist me in correcting the errors in the transcript and reopening the case. This is the reason James R. Schulz is no longer a U.S. Attorney.**

This the 03 day of May, 2001.

Respectfully submitted,
Roland Johnson, Pro Se

_____

Roland V. Johnson, Pro Se

35 Gloster Rd
Lawrenceville, Ga 30044
(770) 279 - 1634

APPENDIX - G

TRANSCRIPT OF SETTLEMENT AGREEMENT DATED 08-24-99 (PAGE3)

MR. MATTHEWS: THANK YOU. YOUR HONOR. THE PLAINTIFFS HAVE REACHED AN AGREEMENT IN THIS CASE WITH RESPECT TO THE COMPLAINT THAT HAS BEEN FILED WHICH ENCOMPASSES THE FOLLOWING LANGUAGE:

THE DEFENDANTS, WHICH INCLUDES THE UNITED STATES POST OFFICE AND THE UNITED STATES, HAD AGREED IN THIS CASE TO PAY TO THE PLAINTIFF A TOTAL SUM OF $103,000 IN A LUMP SUM AMOUNT, AND THAT SUM IS TO BE PAID TO THE PLAINTIFF AND MYSELF, AND WILL GO INTO MY TRUST ACCOUNT.

THE COURT: THE CHECK IS TO BE JOINTLY MADE OUT TO YOU AND - - MR. MATTHEWS AND TO THE PLAINTIFF?

MR. MATTHEWS: YES. YOUR HONOR. AND THAT AMOUNT THEN WILL GO INTO MY TRUST ACCOUNT FROM WHICH I WILL DISPERSE AN AMOUNT OF $10,000 TO MR. EUGENE FELTON WHO IS THE ATTORNEY OF RECORD IN THIS CASE. THE REMAINDER WILL BE DISPERSED IN ACCORDANCE WITH THE DIRECTIONS OF THE PLAINTIFF.

APPENDIX - G

THE PARTIES HAVE FURTHER AGREED, YOUR HONOR. THAT THAT CHECK WILL BE PROVIDED ON OR BEFORE 8, OCTOBER OF 1999. BETWEEN TODAY AND THAT DATE, YOUR HONOR, IT IS AN AGREEMENT THAT MR. JOHNSON WILL REMAIN ON THE PAYROLL OF THE U.S. POSTAL SERVICE, AND WILL BE CARRIED EITHER AS A COMBINATION OF SICK LEAVE OR ADMINISTRATIVE LEAVE WITH PAY UNTIL THE CHECK IS AVAILABLE. ON OCTOBER 1, 1999, MR. JOHNSON WILL RECEIVE A LUMP SUM PAYMENT OF HIS ACCRUED ANNUAL LEAVE AS OF THAT DATE.

THE PLAINTIFF, YOUR HONOR, HAS AGREE THAT IN RETURN

APPENDIX - G

to reopen the case.

1. R2 - 44. The district court denied the motion as untimely. R2 - 45.
   This appeal followed. R2 - 46.

2. Statement of the Facts

At the conclusion of the settlement conference at 5 : 30 p.m. On August 24, 1999, the parties stated their agreement on the record in open court. R3 - 2. Magistrate Judge Brill asked Mr. Johnson's attorney, Leodis C. Matthews to state the terms of the settlement. R3 - 2. Mr. Matthews stated that the agreement was as follows. The Postal Service would pay $103,000 on or by October 8, 1999 to Mr. Matthews and Mr. Johnson in a lump sum amount to be placed in Mr. Matthews' trust account. R3 - 3. From this amount $10,000 would be dispersed to Mr. Johnson's attorney, Eugene Felton, Jr., and the remainder would be dispersed as Mr. Johnson diredted. R 3 - 3. From August 24, 1999 until the date payment was received by Mr. Matthews, Mr. Johnson would remain on the payroll of the Postal Service on sick leave and / or administrative leave. R3 - 3. On October 1, 1999, Mr. Johnson would receive payment for his accrued annual leave.

APPENDIX - G

R 3 - 3. In return Mr. Johnson agreed to dismiss the pending action and tender his resignation effective the date Mr. Matthews received payment. R 3 - 4. Mr. Johnson agreed to withdraw his pending worker's compensation claim and waive any and all

---

1 The 120 day period for reopening the case expired on December 30, 1999. Mr. Johnson's motion to reopen was not filed until August 3, 2000. The first page of the motion is a fax cover sheet which is dated January 27, 2000; however, the fax transmission line at the top of the page shows a transmissio date of August 3, 2000, the same date as the filing date. R 2 - 44.

APPENDIX - G

STATE BAR OF GEORGIA
OFFICE OF THE GENERAL COUNSEL

WILLIAM P. SMIITH,III
Disciplinary Counsel
General Counsel
PAULA J. FREDERICK

Deputy General Counsel
Bar Counsel
JENNY K. MITTELMAN
ROBERT E. McCORMACK
JONATHAN HEWETT
Deputy General Counsel
Sr. Assistant General Counsel
JOHN J. SHIPTENKO
E. DUANE COOPER
Assistant General Counsel
GENE CHAPMAN

ELIZABETH M. WILLIAMSON

Assistant General Counsel

KELLYN O. McGEE

Grievance Counsel

APPENDIX - G

May 1, 2001

CONFIDENTIAL
Mr. Roland Johnson
35 Gloster Road
Lawrenceville, GA 30044

Re: Grievance filed against Mr. James R. Schulz,
Bar # 630274
2400 International Tower 229 Peachtree
Street, N.E., Atlanta, GA 30303-1629

Dear Mr. Johnson:

Enclosed is a copy of Mr. Schulz's repsonse to your grievance. At this time I invite you to rebut the response and add any additional facts to the file that you believe may be relevant.

Please send your response no later than May 19, 2001.

Thank you for you cooperation during the informal investigation of this grievance.

Sincerely,
Kellyn O. McGee
Grievance Counsel

APPENDIX - G

KOM:chp
cc: James R. Schulz

800 The Hurt Building • 50 Hurt Plaza • Atlanta, Georgia 30303
(404) 527-8720 • (800) 334 - 6865 • (404) 527 - 8744 facsimile

APPENDIX - G

RAGSDALE, BEALS HOOPER & SEIGLER, LLP
ATTORNEYS AND COUNSELORS AT LAW
A PARTNERSHIP OF INDIVIDUALS AND P.C.'S
2400 INTERNATIONAL TOWER PEACHTREE CENTER
229 PEACHTREE ST., N.E.
ATLANTA, GEORGIA 30303-1629
(404) 588 - 0500
FAX VO. (404) 523 - 6714

JOHN W. RAGSDAL, JR.
D. KENT BEALS
WILLIAM J. SEIGLER III
WILLIAM RUSSELL PATTERSON, JR.
HERBERT C. BROADFOOT II, P.C.
HERBERT H. GRAY, III, P.C.
JAMES R. SCHULZ

LISA F. STUCKEY

OF COUNSEL
ELLIS C. HOOPER
1950 SULLIVAN ROAD
ATLANTA, GEORGIA 30337
(770) 996 - 0500

JAMES W. DUNBAR, JR
(ADMITTED IN SC, VA AND CO ONLY)

GARY W. HATCH (1992 - 2000)

APPENDIX - G

April 30, 2001

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ms. Kellyn O. McGee
Grievance Counsel
States Bar of Georgia
800 The Hurt Building
50 Hurt Plaza
Atlanta, Georgia 30303

RE: Grievance filed by Roland Johnson, Lawrenceville, Georgia

Dear Ms McGee:

I appreciate the opportunity to provide your office with additional information about the matters described in the Grievance filed by Roland V. Johnson.

I represented the Postmaster General in an employment discrimination action, originally filed pro se by Mr. Johnson. Early in the case Eugene Felton, Jr. entered his appearance as counsel for Mr. Johnson and represented Mr. Johnson through discovery and summary judgment. After defendant's summary judgment motion was denied in part and the pretrial order filed, the case was referred to a settlement judge for mediation. At the settlemen

APPENDIX - G

t conference, Leodis Matthews represented Mr. Johnson. Mr. Felton participated in the settlement negotiations because of his claim for attorney's fees. After hours of negotiation between Mr. Matthew and myself, consultation with our clients and Mr. Felton, agreement was reached; which Mr. Matthews spoke into the record in open court with Mr. Johnson present. The proceedings were taken down by a court reporter. A copy of the transcript is enclosed. Although Mr. Johnson contends otherwise, no statement was made that the settlement proceeds were not taxable. No representative of the Internal Revenue Service took part in the settlement negotiations.

In his grievance Mr. Johnson refers to a $10,000 payment from the Postal Service to his attorneys. A $10,000 payment to Mr. Felton was part of the settlement. It was to settle his claim for attorney's fees.

If you have any questions or need any additional information, please telephone me at (404) 588 -0500.

Sincerely yours,

James R. Schulz

Enclosure
JRS / kbl

APPENDIX - G

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

ROLAND V. JOHNSON, pro se	:	
	:	
Plaintiff / Appellant	:	CIVIL ACTION
	:	FILE NO. 00-14596
vs.	:	
	:	
WILLIAM J. HENDERSON	:	
Postmaster General	:	
	:	
Defendant / Appellee,	:	

CERTIFICATE OF SERVICE

This is to certify that I have served a true and accurate copy of the within and foregoing Appellant Request En Banc, Motion to Amend his petition for Rehearing and Review En Banc for lack of Jurisdiction, by Hand Delivery to insure delivery to:

James R. Schulz
Assistant United States Attorney
1800 United States Courthouse
75 Spring Street, S.W.
Atlanta, Ga 30335

APPENDIX - G

William A. Cambell, Jr
District Counsel Office
Law Dept. Atlanta Field Office,
US Postal Service
3980 Dekalb Technology Pkwy,
Ste 840
Atlanta, Ga 30340 - 2778

This the 03 day of May, 2001.

ROLAND V. JOHNSON

_____

Plaintiff / Appellant, pro se

35 Gloster Rd
Lawrenceville, Ga 30044
(770) 279 - 1634

APPENDIX - G

IN THE UNITED STATES COURT OF APPEAL
FOR THE ELEVENTH CIRCUIT

No. 00-14596- GG

ROLAND V. JOHNSON,

Plaintiff - Appellant,

versus

WILLIAM J. HENDERSON,
Postmaster General

Defendant - Appellee.

On Appeal from the United States District Court for the Northern District of Georgia

---

O R D E R:

Motion of Appellant to amend petition for rehearing en banc is *granted.*

United States Cicuit Judge

APPENDIX - H

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00 - 14596 - GG

ROLAND V. JOHNSON, Plaintiff - Appellant,

versus

WILLIAM J. HENDERSON,
Postmaster General, Defendant - Appellee.

On Appeal from the United States District Court for the Northern District of Georgia

---

ON PETITION (S) FOR REHEARING AND
PETITION (S) FOR REHEARING EN BANC

(Opinion _____, 11th Cir., 19__, ___F.2d____)

Before: EDMONDSON, DUBINA and HULL, Circuit Judges.

PER CURIAM:

The Petition (s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35,

APPENDIX - I

Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35 - 5), the Petition (s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

_____

UNITED STATES CIRCUIT JUDGE

ORD - 42
(6 / 95)

APPENDIX - I

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 00 - 14596 - GG

ROLAND V. JOHNSON,

Plaintiff - Appellant,

versus

WILLIAM J. HENDERSON,
Postmaster General,

Defendant - Appellee

On Appeal from the United States District Court for the Northern District of Georgia

---

ORDER:

(**X**) The motion of Appellant, Roland V. Johnson, for (x) stay ( ) recall and stay of the issuance of the mandate pending petition for writ of certiorari is DENIED.

( ) The motion of Appellant, Roland V. Johnon, for (x) stay ( ) recall and stay of the issuance of the mandate pending petition for writ of certiorari is GRANTED to and including, the stay to continue in force until the final disposition of the case by the

APPENDIX - J

Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

( ) The motion of Appellant, Roland V. Johnson, for a further stay of the issuance of the mandate is GRANTED to and including September 4, 2001, under the same conditions as set forth in the preceding paragraph.

( ) IT IS ORDERED that the motion of Appellant, Roland V. Johnson, for a further stay of the issuance of the mandate is DENIED.

UNITED STATES CIRCUIT JUDGE
ORD - 45

APPENDIX - J

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 00 - 14596

District Court Docket number
97-01755 - CV -JRS -1

ROLAND V. JOHNSON,
Plaintiff - Appellant,

versus

WILLIAM J. HENDERSON,
Postmaster General,
Defendant - Appellee.

Appeal from the United States District Court
for the Northern District of Georgia

JUDGMENT

It is hereby ordered, adjudged, and decreed that the attached opinion, included herein by reference, is entered as the judgment of this Court.

Entered: March 13, 2001
For the Court: Thomas K. Kahn, Clerk
By: McCombs, Elaine

APPENDIX - K